



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 201021-0276]

RIN 0648-BK15

Fisheries Off West Coast States; Emergency Action to Temporarily Extend the Primary Sablefish Fishery Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule temporarily extends the 2020 sablefish primary fishery from October 31, 2020 to December 31, 2020. This action is necessary to provide operational flexibility so that vessels in the sablefish primary fishery are able to fully harvest their tier limits despite high economic uncertainty in 2020. This action would also extend the incidental halibut retention allowance provision for the sablefish primary fishery from October 31, 2020 to November 15, 2020 and set the halibut retention limit during this time period at 250 pounds (113 kilograms) dressed weight of Pacific halibut for every 1,000 pounds (454 kilograms) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 250-pounds-per-1,000-pound limit per landing.

DATES: Effective [*Insert date of publication in the FEDERAL REGISTER*] until December 31, 2020. Comments must be submitted by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0133 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2020-0133, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Barry Thom, c/o Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic Access

This emergency rule and supporting documents, including a Supplemental Information Report prepared for this action, are accessible via the Internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are also available at the NMFS West Coast Region website at:

<https://www.fisheries.noaa.gov/species/west-coast-groundfish> and at the Pacific Fishery

Management Council's website at

https://www.pcouncil.org/managed_fishery/groundfish/.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, phone: 206-247-8252, or e-mail: *Keeley.kent@noaa.gov*.

SUPPLEMENTARY INFORMATION: The primary sablefish fishery tier program is a limited access privilege program set up under Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP); which was approved by the Pacific Fishery Management Council (Council) in 2000 and was implemented by NMFS on August 2, 2001 (66 FR 41152; August 7, 2001). Participants hold limited entry permits with a pot gear and/or longline gear endorsement and a sablefish endorsement.

Under Amendment 14, as set out in § 660.231, the permit holder of a sablefish-endorsed permit receives a tier limit, which is an annual share of the sablefish catch allocation to the primary fishery. NMFS sets three different tier limits through the biennial harvest specifications and management measures process (for the 2020 limits, see 83 FR 63970, December 12, 2018), and up to three permits may be stacked at one time on a vessel participating in the fishery. Stacked tier limits are combined to provide a cumulative catch limit for that vessel. After vessels have caught their full tier limits, they are allowed to move into other fisheries for sablefish, specifically the daily trip limit (DTL) fishery or the open access fishery, or fisheries for other species.

Under Amendment 14, the sablefish primary season has historically been open from April 1 through October 31 of each year, though individual permit holders may only fish up to their tier limits so may be required to cease fishing prior to October 31. These season dates were put into regulation during the development and implementation of the fishery under Amendment 14. Prior to the implementation of Amendment 14, the

sablefish fishery had operated as a ‘derby’ style fishery, with a season length lasting a few weeks to a few days. Under Amendment 14, the fishery began operating under a 7-month season. The 7-month season structure, as opposed to a year-long season, was intended to allow for timely catch accounting so that the sector allocation was not exceeded.

Vessels in the primary fishery north of Point Chehalis, Washington are also allowed to retain incidentally caught Pacific halibut up to a specific limit specified at § 660.231(b)(3)(iv). Halibut are encountered regularly in the normal operation of the sablefish primary fishery due to the co-occurrence of halibut and sablefish in the same environments, and the design and function of fixed gear. This retention is allowed until the sablefish primary season ends and it contributes additional economic value to this sector. Additionally, many vessels in the primary sablefish fishery also participate in sablefish and Pacific halibut fisheries in Alaska.

2020 Fishery Outlook

At the September 2020 Council meeting, industry participants requested an extension to the 2020 sablefish primary fishery. The Council's Groundfish Management Team (GMT) provided analysis of the 2020 sablefish primary fishery participation and performance compared to prior years of the fishery. The GMT demonstrated in their analysis that from 2011 to 2019, annual attainment averaged over 90 percent of total sablefish tier allocations, with 65 percent harvested between April and mid-September. By contrast, the GMT showed the fishery in 2020 has only attained 33 percent of its allocation as of mid-September. This underattainment is attributed to delays experienced in the Alaska fisheries, in which many vessels in the sablefish primary fishery also

participate. These delays are due to local travel restrictions, postponed season start dates, and quarantine requirements, all related to the ongoing COVID-19 pandemic. The GMT estimated that if the primary sablefish fishery season closed on October 31, 2020, the fishery would only attain 46 percent of its allocation, which equates to about \$2.86 million in lost ex-vessel revenue and additional economic benefits for coastal communities.

The Council reviewed the information provided by the GMT and by fishery stakeholders and discussed options to provide relief to commercial fishermen in the primary sablefish fishery from economic losses as a result of the recent unforeseen events associated with COVID-19 that began in approximately March 2020. These unforeseen events have adversely affected commercial fishermen throughout the Council's jurisdiction for an extended period of time. Commercial stakeholders informed the Council that the recent events have caused many individuals, businesses and communities to suffer significant economic hardships from lost or reduced income and fishing opportunities. These events have also caused serious management problems by making it more difficult to achieve optimum yield (OY) for sablefish.

At its September 2020 meeting, after evaluating the information provided to it, the Council recommended that NMFS initiate an emergency action to extend the sablefish primary fishery season from October 31, 2020 to December 31, 2020, to allow participants more time to harvest their full tier limits. As part of the emergency action, the Council also recommended an extension of the incidental halibut retention allowance north of Point Chehalis, Washington to November 15, 2020, and setting the retention limit at 250 pounds (113 kg) dressed weight of Pacific halibut for every 1,000 pounds

(454 kg) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 250-pounds-per-1,000-pound limit per landing. The retention allowance ensures additional economic benefits and reduces regulatory discards of commercially valuable incidental halibut.

Criteria and Justification for Emergency Action

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement temporary emergency regulations to address fishery emergencies. NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines limit emergency management actions to recent unforeseen events or recently discovered circumstances that present serious management problems in the fishery when the benefits of an emergency action outweigh the benefits of the normal rulemaking process.

NMFS has evaluated all relief mechanisms and, given the limited time remaining in the primary fishery season, an emergency action to extend the season is the only mechanism sufficient to provide participants access to their quota. NMFS is issuing this emergency rule in compliance with the NMFS guidelines to prevent significant direct economic loss and preserve economic opportunities that otherwise might be foregone.

This emergency action will help the fishery achieve, but not exceed, the allocation of sablefish to the primary sablefish fishery, and the sablefish annual catch limit. As such, in evaluating the anticipated effects of this emergency action, NMFS determined that the effects fall within those described in the Environmental Assessment for the 2019-2020

Groundfish Harvest Specifications and Management Measures; which is tiered from the Harvest Specifications and Management Measures for 2015-2016 and Biennial Periods Thereafter Final Environmental Impact Statement (EIS) which discloses the longer-term framework and environmental impacts of the biennial specifications process. NMFS documented this decision-making process in a Supplemental Information Report (see **ADDRESSES**).

Emergency Measures

Effective [*insert date of publication in the FEDERAL REGISTER*], this action temporarily extends the 2020 sablefish primary season for vessels registered to limited entry fixed gear, sablefish-endorsed permits North of 36° N. lat., from October 31, 2020 to December 31, 2020. This action includes a small administrative change to allow an additional transfer of sablefish-endorsed limited entry permits so that these permits may be transferred up to two times within a calendar year. This change will allow fishery participants to appropriately take advantage of the extended season.

This action also extends the incidental halibut retention allowance for the sablefish primary fishery North of Point Chehalis, Washington, to November 15, 2020, which is the latest date allowed by the International Pacific Halibut Commission. Under these emergency measures, the incidental retention allowance limit is set at 250 pounds (113 kg) of dressed halibut per 1,000 pounds (454 kg) of dressed sablefish and up to 2 additional Pacific halibut in excess of the 250-pounds-per-1,000-pound limit per landing. After November 15, any incidental halibut would need to be discarded as a prohibited species.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the PCGFMP, Section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), the Northern Pacific Halibut Act of 1982, and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds good cause to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

The Council did an emergency modification to their September 2020 meeting agenda to consider taking emergency action in response to requests from industry representatives, the Groundfish Advisory Subpanel, and the public. These entities raised concerns that many vessels would be unable to harvest their allocations before the primary season closed due to unforeseen issues resulting from restrictions associated with the COVID-19 pandemic. The Council considered and ultimately recommended NMFS initiate this action on September 17th, with less than 6 weeks remaining before the closure of the sablefish primary season on October 31. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to provide relief for a time-sensitive management problem. Further delays to extend the season through emergency action would jeopardize the ability of sablefish primary fishery participants to land allocations, and avoid economic hardship. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on these emergency measures.

Additionally, this rule is exempt from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it relieves a restriction that would place

fishery participants at an economic disadvantage. Waiving the 30-day delayed effectiveness for this rule is necessary to allow participants in the sablefish primary fishery under emergency rules to continue fishing operations with minimal interruption beyond the status quo closure date of October 31. Not extending the sablefish primary fishery season past October 31 would present immediate serious economic impacts without contributing to the economic goals of the sablefish tier program. Because this rule alleviates a restriction, which if continued would otherwise have serious and unnecessary economic harm on tier fishery vessels, it is not subject to the 30-day delayed effectiveness provision of the APA.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review. This rule is not significant.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This emergency rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: October 21, 2020.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C 7001 *et seq.*

2. In § 660.25, add paragraphs (b)(4)(vii)(B)(1) and (2) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(vii) * * *

(B) * * *

(1) Under emergency measures effective [*Insert date of publication in the FEDERAL REGISTER*] until December 31, 2020, Sablefish-endorsed limited entry fixed gear permits (without MS/CV or C/P endorsements) may be registered for use with a different vessel up to twice per calendar year.

(2) [Reserved]

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3. In § 660.213, revise paragraph (d)(2) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

* * * * *

(d) * * *

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through October 31 (unless otherwise provided for at § 660.231(b)(1)(i)) or, for an individual vessel owner, when the tier limit for the permit(s) registered to the vessel has been reached, whichever is earlier.

* * * * *

4. In § 660.231, revise paragraph (b)(1), add paragraphs (b)(3)(iv)(A), and (B) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(1) *Season dates.* North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on October 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

(i) Under emergency measures effective [*insert date of publication in the FEDERAL REGISTER*] until December 31, 2020, notwithstanding any other section of these regulations, North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels closes at 12 noon local time on December 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise

announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

(ii) [Reserved]

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(3) * * *

(iv) * * *

(A) Under emergency measures effective [*insert date of publication in the FEDERAL REGISTER*], until November 15, 2020, notwithstanding any other section of these regulations, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30' N. lat.) may possess and land up to 250 pounds (113 kg) dressed weight of Pacific halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 250-pounds-per-1,000-pound limit per landing. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

(B) [Reserved]

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